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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 GENGHIS KHAN ALI STEVENSON, ) Civil No. 11-0103-LAB(WVG)  
12 Plaintiff, )  
13 v. ) ORDER DENYING PLAINTIFF'S  
14 GREGORY BLAKE, ) MOTION FOR SANCTIONS  
15 Defendant. ) (DOC. NO. 60)  
16 \_\_\_\_\_ )  
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18 On December 17, 2012, Plaintiff filed a Motion for Sanctions  
19 ("Motion"). On January 7, 2013, Defendant filed an Opposition to the  
20 Motion. On January 14, 2013, the Court held a hearing on the Motion.  
21 The Court, having reviewed the moving and opposition papers of  
22 Plaintiff and Defendant, and having heard oral argument, and GOOD  
23 CAUSE APPEARING, HEREBY DENIES Plaintiff's Motion.

24 On September 23, 2011, Plaintiff served on Defendant a  
25 Request for Production of Documents seeking, *inter alia*, all written  
26 reports and statements about the incident on March 13, 2007 between  
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1 8:00 and 9:00 AM<sup>1/</sup> made by Defendant Blake and all written reports  
2 and statements made by Defendant Blake in regard to Staff Complaint,  
3 Appeal Log. No. CAL-4-07-00544 at Calipatria State Prison  
4 ("Calipatria").<sup>2/</sup>

5 On October 26, 2011, Defendant responded that there were no  
6 responsive written reports or statements by Defendant Blake.

7 On January 18, 2012, Plaintiff filed a Motion to Compel  
8 Further Responses to the above-noted Requests for Production of  
9 Documents. Defendant filed an Opposition to the Motion to Compel  
10 stating that he could not provide further responses because there  
11 were no documents responsive to Plaintiff's Requests for Production  
12 of Documents. Based on Defendant's Opposition, on January 23, 2012,  
13 the Court denied Plaintiff's Motion to Compel.

14 On August 10, 2012, the District Judge assigned to this case  
15 affirmed in part the Order of January 23, 2012.

16 On August 30, 2012, Defendant informed the Court (via the  
17 Declaration of G. Nunez, a Correctional Counselor at Calipatria),  
18 that there existed a "Confidential Supplement To Appeal: 'Appeal  
19 Inquiry,' dated May 14, 2007 that is responsive to Plaintiff's  
20 Requests for Production of Documents. However, since the document  
21 was confidential, and producing it to Plaintiff could endanger  
22 persons employed at Calipatria, imprisoned at Calipatria, or the  
23 prison itself, he could not produce the document to Plaintiff, but  
24 could produce it to the Court for *in camera* review.

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27 <sup>1/</sup>The incident to which the Request for Production of Documents refers is  
the subject of this lawsuit.

28 <sup>2/</sup>The document production requests were Plaintiff's Requests for Production  
of Documents, nos. 1 and 2.

1 On September 24, 2012, the Court ordered that the above-noted  
2 document be produced to the Court for *in camera* review. On September  
3 25, 2012, Defendant lodged the document with the Court.

4 On October 3, 2012, the Court ordered Defendant to produce to  
5 Plaintiff the "Confidential Supplement To Appeal: 'Appeal Inquiry,'  
6 dated May 14, 2007 and the Memorandum of T. Armstrong, dated March  
7 13, 2007.<sup>3/</sup>

8 On December 20, 2012, Plaintiff filed the Motion for  
9 Sanctions that is now before the Court. In the Motion, Plaintiff  
10 insisted that Defendant had failed to produce other documents that  
11 were responsive to his Requests for Production of Documents that he  
12 knew existed, but that Defendant told him and the Court did not  
13 exist.

14 On January 7, 2013, Defendant filed an Opposition to  
15 Plaintiff's Motion. The Declaration of M. Ormand, *inter alia*, was  
16 submitted in support of Defendant's Opposition. Attached to Ormand's  
17 Declaration were six documents that were responsive to Plaintiff's  
18 Requests for Production of Documents, that had not been previously  
19 produced to Plaintiff. The six documents include one two-page  
20 document that Plaintiff insisted existed all along, but that  
21 Defendant claimed did not exist.

22 At the January 14, 2013 hearing, Defendant's counsel, Susan  
23 Coleman, explained that when she receives a Request for Production  
24 of Documents, she customarily requests the sought documents from the  
25 litigation coordinator at the prison where the incident took place.  
26 Also, she provides the Request for Production of Documents to the  
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28 <sup>3/</sup>The Memorandum of T. Armstrong was attached to the "Confidential  
Supplement To Appeal: 'Appeal Inquiry,' dated May 14, 2007.

1 litigation coordinator. She stated that she does not personally  
2 search for the requested documents at the prison. Rather, she relies  
3 on the litigation coordinator to search for and collect the  
4 requested documents. Thereafter, the litigation coordinator provides  
5 the searched-for, collected documents to her.

6 Also, at the hearing, Gabriela Nunez, the Litigation  
7 Coordinator at Calipatria at the time Plaintiff served the Requests  
8 for Production of Documents, explained the process she used for  
9 obtaining requested documents. From Ms. Nunez' explanation, it  
10 became apparent to the Court that either a mistake was made in  
11 requesting the documents sought by Plaintiff, or there was a simple  
12 lack of diligence in assuring that all documents responsive to  
13 Plaintiff's Requests for Production of Documents were either  
14 produced to Plaintiff, or to the Court for *in camera* review.

15 Therefore, the Court concludes that Defendant's failure to  
16 timely produce all of the documents responsive to Plaintiff's  
17 Requests for Production of Documents was not purposeful nor an  
18 intentional effort to avoid his discovery obligations nor to gain a  
19 tactical advantage over Plaintiff. As a result, Plaintiff's Motion  
20 for Sanctions is DENIED.

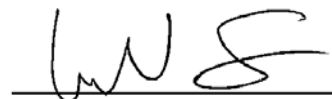
21 However, the Court has grave concerns that Defendant did not  
22 act with due diligence in searching for and producing the documents  
23 requested by Plaintiff. Instead, Defendant took a cavalier approach  
24 to searching for and producing the requested documents, despite the  
25 fact that Plaintiff had represented to Defendant, and to the Court,  
26 on several occasions, that certain documents he knew existed, had  
27 not been produced to him. In fact, Plaintiff was correct in his  
28 assertions. Moreover, the documents he insisted existed would have

1 never been produced to him had he not filed the Motion for Sanc-  
2 tions, which apparently caused Defendant to engage in a further  
3 search for responsive documents.

4 Defendant and the authorities at Calipatria are warned that  
5 the Court expects that they will act with *due diligence* in searching  
6 for and producing requested documents. This means that a search must  
7 be conducted in all places in which responsive documents may exist.  
8 A person who conducts the search for documents must not simply  
9 request documents from an office which he/she believes responsive  
10 documents exist. Rather, the search must include *all places* where  
11 the requested documents may be found. If a question exists as to  
12 whether a particular document is responsive to a document production  
13 request, it should be referred to the counsel representing the  
14 defendant(s) in the case. A decision whether to produce, or not  
15 produce, a document should not be made by a litigation coordinator,  
16 an appeal administrator, or any other person employed in the  
17 correctional institution.

18 IT IS SO ORDERED.

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20 DATED: January 16, 2013

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23 Hon. William V. Gallo  
24 U.S. Magistrate Judge  
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